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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Steven Curtis Zicker & Karen J. Wedekind

Group No.: **1614**

Serial No.: ~~9/922,660~~ 9/978132

Examiner: Phyllis Spivack

Filed: **8/6/01**

For: **Composition and Method**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to the: Commissioner for Patents & Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450 on this 19th day of Sept, 2003.

Phyllis Colleton-Carter

(Signature of person mailing paper or fee)

Dear Sir:

Reply Under 37 CFR1.111

Claims 12-22, 26 and 28-31 remain in the case. All of the claims have been rejected under 35USC 103, obviousness, over Hamilton. Additionally claims 12, 13 and 26 are rejected under 35USC102, novelty, over Milgram.

This case discloses that dogs and cats when provided an antioxidant in its adult years (age 1 to 6) will have an effect on its mental capacity in its aged years (age 7 and above). Various antioxidants and groups of antioxidants are named. Additionally the mental capacity of an adult dog or cat (ages 1-6 years) can be increased in its adult years by providing the adult dog or cat an

antioxidant. Various antioxidants are provided. The independent claims below more specifically delineate these observations.

12. Inhibit onset of deterioration of the mental capacity of an aged pet (7 years or older) by feeding pet an antioxidant in its adult years (1-6 years).

26. Increasing mental capacity of an adult pet by feeding the adult pet an antioxidant.

28. Method for resisting oxidation damage in pet's aged years by feeding pet in its adult years, a diet having at least 25 ppm lipoic acid.

29. Same as claim 28 but diet is provided to an aged pet.

30. Method for inhibiting the loss of learning ability in an aged pet by feeding the adult pet an antioxidant selected from the group consisting of Vitamin E, C, alpha lipoic acid, and carnitine.

31. Same as claim 30 but claim is directed to increasing the learning ability of the adult pet.

In all of the claims but claim 29 the recipient of the antioxidant is not the aged pet but rather the adult pet (6 years or less). The benefit that is claimed is seen in the aged years (7 or above) claims 12, 28-30, or in the adult years (ages 1-6), claims 26 and 31.

The Hamilton reference discloses various ills which are age related or present from outside sources such as carbon monoxide poisoning, diabetes mellitus, obsessive compulsive disorder and the like. When referring to humans

which is what the complete disclosure references, except for the single two sentence paragraph appearing at column 10, lines 9-13 which mentions inter alia dogs and cats, the grouping of

"carnitine and lipoic acid, and optionally coenzyme Q and/or creatine, are improved memory to (sic) older individuals and others with unhealthy mitochondria", column 7, lines 14-17.

There is no indication whatsoever that these materials should be provided to anyone other than an aged human. In fact there is absolutely no data concerning any aged human or mammal receiving those components. Rather Hamilton is replete with information as to measuring memory loss, testing for AAMI, or other memory deficits and even using analytical techniques such as PET scans and functional MRI for localizing and quantitating the neuroanatomical localization of cognition deficits, see column 11, lines 14-34. However, not even a prophetic example is provide for aged humans per se as is done for the trauma bringing about cognitive impairments in all the provided examples. There is no disclosed method in Hamilton which could even measure the impairments in dogs and cats. Certainly dogs and cats can not draw a clock with the hands at a set time, see column 11, lines 20-23.

This lack of disclosure with respect to dogs and cats is further illustrated by the one and only sentence appearing in Hamilton regarding "expectations" , i.e.

"Animals expected to benefit from the composition include but are not limited to dogs, cats, horses, birds and fish", column 10, lines 11-13.

But, just what are these expectations? What are the benefits and to what degree? With this kind of statement, would it be surprising that nothing would occur and, if not what would occur? How would it be measured? By the dog drawing a clock? Further, even amounts to be included in the pet formulations are not disclosed.

Additionally there is no disclosure in Hamilton which suggest that vitamins E or C are effective for obtaining the benefits of the Hamilton disclosure in any animal, much less a dog or cat. The only place in Hamilton where specific vitamins are mentioned is at column 10, lines 16-22. This passage is not directed to the benefits of the Hamilton patent but rather is directed to the fact that certain "nutrients" are important in "older (not aged human) individuals" and specifically lists "calcium, vitamins B12, B6, C, D, or E, folic acid, niacin, iron and zinc". These are nutrients which are found to be deficient in the diet of elders (emphasis supplied) according to Hamilton.

In short, the Hamilton disclosure at best only leads to the administration to aged people the materials of his invention for reasons which are not adequately disclosed for dogs and cats and which do not suggest the use of Vitamin E or C to obtain any effect other than their already known use as a nutrient. Applicant respectfully submits that all the claims are non-obvious over Hamilton.

The citation of Milgram to reject claims 12, 13 and 26 is not totally understood since it appears to relate to dosing aged dogs. However the addition of the limitation of claim 14 with respect to age would be considered as an amendment to claims 12 and 26.

Whereupon applicant by his attorney respectfully requests the consideration and allowance of the pendant claims.

Respectfully submitted,

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